

The claimant appeared by and through her attorney, Judy A. Pope, of Topeka, Kansas. The respondent, Medicalodges, Inc., a qualified self-insured, appeared by and through its attorney, H. Wayne Powers, of Overland Park, Kansas. There were no other appearances.

**RECORD**

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

**STIPULATIONS**

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) Whether claimant is entitled to additional temporary total disability compensation from November 26, 1992 through December 13, 1992.
- (2) The nature and extent of claimant's disability as a result of the April 13, 1990 accident.
- (3) Is the claimant entitled to unauthorized medical?
- (4) Is the claimant entitled to future medical?
- (5) The amount of compensation due and owing to claimant, if any.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein and in addition to the stipulations by the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Workers Compensation Appeals Board on review of any act, finding, award, decision, ruling or modification of findings or awards of the Administrative Law Judge shall have the authority to grant or refuse compensation, or to increase or to diminish the award of compensation or to remand any matter to the Administrative Law Judge for further proceedings. K.S.A. 44-551(b)(1).

- (1) Claimant was enrolled in a 12-week vocational rehabilitation job placement plan and was paid temporary total benefits during this vocational rehabilitation period except for 2.57 weeks between the period November 26, 1992 through December 13, 1992. The un rebutted testimony is that claimant complied with the requirements of the vocational rehabilitation plan. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). As the claimant's testimony in this matter has not been rebutted, the Appeals Board finds that claimant is entitled to temporary total disability compensation during the period November 26, 1992 through December 13, 1992, for a total of 2.57 weeks at the rate of \$122.67, totalling \$315.26.
- (2) The Appeals Board is persuaded by a preponderance of the credible evidence, after reviewing the entire record, that claimant has proven her entitlement to a five percent (5%) permanent partial impairment to the body as a whole on a functional basis as a result of her accidental injury of April 13, 1990.

Claimant, a CNA, suffered an injury to her left shoulder, arm, wrist and hand on April

13, 1990, while working for respondent. As a result of this injury claimant alleged she is incapable of returning to her employment as a CNA and has been greatly hindered in her ability to perform the daily functions of life including the normal cleaning activities in a household. Claimant also alleges she is incapable of dressing herself.

Claimant's allegations regarding her physical disabilities are directly contradicted by her sister, Linda Covey. Ms. Covey described the claimant's physical activities in detail and alleged that claimant was in no way inhibited from any of the physical activities of cleaning and maintaining a household and had no difficulty whatsoever in dressing herself. Ms. Covey went on to describe a certain instance involving a wheelbarrow which indicated claimant's physical limitations are considerably less than claimant indicated.

Dr. L.E. Malmstrom, a local chiropractor, examined claimant on April 23, 1992. During the examination Dr. Malmstrom found both symptom magnification and psychogenic overlay. Dr. Malmstrom rated claimant at eight percent (8%) permanent partial general body impairment on a functional basis as the result of the left upper extremity complaints and further rated claimant at five percent (5%) permanent partial general bodily impairment on a functional basis as a result of neck complaints. Dr. Malmstrom found multiple conflicts during the examination including a lack of atrophy in areas claimant alleged she was physically incapable of using, multiple neck symptoms during the examination which were not listed on his admissions questionnaire, and unexplainable neurological deficiencies.

Claimant was examined by Dr. Brent Koprivica on January 22, 1993. Dr. Koprivica found claimant to be less than forthright as claimant failed several clinical tests during the examination indicating less than maximum effort. Dr. Koprivica further reported non-physiologic findings during the hand grip test and the two-point discrimination test. The claimant's allegations of lack of use with no finding of atrophy, abnormal findings during the Tinel's and Phalen's tests, and give way weakness during the examination further contribute to Dr. Koprivica's suspicion of claimant's credibility. Dr. Koprivica noted that claimant alleged an inability to straighten her elbow, but when her shoulder was being tested she fully straightened the elbow without complaint.

K.S.A. 1992 Supp. 44-501(a) states in part:

"If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record."

K.S.A. 44-501(g) defines the burden of proof as follows:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

The Appeals Board finds that, based upon a review of the entire record, claimant has failed to show by a preponderance of the credible evidence that she has suffered a work disability and that the presumption of no work disability contained in K.S.A. 1992 Supp. 44-510e(a) has not been overcome. As such claimant is limited to a functional impairment.

K.S.A. 1992 Supp. 44-510e(a) states in part:

"Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence."

Dr. Malmstrom rated claimant at eight percent (8%) permanent partial impairment to the body as a whole on a functional basis for the injury suffered to her left upper extremity and shoulder. Dr. Koprivica rated claimant at three percent (3%) permanent partial impairment to the body as a whole on a functional basis for the injury suffered to her left upper extremity and shoulder. The Appeals Board reject the five percent (5%) rating of Dr. Malmstrom to claimant's neck as the record does not contain credible evidence to show claimant suffered an injury to her neck while employed with respondent.

The Appeals Board finds that based on a review of the entire record claimant is entitled to a five percent (5%) permanent partial impairment to the body as a whole on a functional basis as a result of the accidental injury of April 13, 1990.

(3) Claimant is entitled to reimbursement of unauthorized medical up to the statutory maximum of \$350.00 as reimbursement for the charges incurred during the examination of Dr. L.E. Malmstrom.

(4) Claimant is entitled to future medical treatment upon application to the Director.

(5) The Appeals Board finds that the claimant, Sandie DeWitt, is entitled to 104.43 weeks temporary total disability at the rate of \$128.42 per week totalling \$13,410.90 followed thereafter by 310.57 weeks of compensation at the rate of \$6.42 per week in the sum of \$1,993.86 for a total award of \$15,404.76.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward dated November 23, 1993, shall be and is affirmed in all respects, and an award of compensation is hereby entered in favor of the claimant, Sandie DeWitt, and against the respondent, Medicalodges, Inc., a qualified self-insured, for 104.43 weeks of temporary total disability compensation, at the rate of \$128.42 per week in the sum of \$13,410.90, followed thereafter by 310.57 weeks of compensation, at the rate of \$6.42 per week, in the sum of \$1,993.86, making a total award of \$15,404.76. As of January 28, 1994, there would be due and owing 104.43 weeks of temporary total disability compensation, at the rate of \$128.42 per week totalling \$13,410.90 plus an additional 93.71 weeks of compensation at the rate of \$6.42 per week in the sum of \$601.62, payable in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of \$1,392.24 shall be paid at the rate of \$6.42 per week for 216.86 weeks or until further order of the Director.

Claimant is entitled to future medical treatment upon proper application to and approval by the Director of Workers Compensation.

Claimant is further entitled to reimbursement up to \$350.00 for authorized medical upon presentation of itemized statement.

Claimant's contract of employment with her attorney is approved subject to the provisions of K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are assessed against the respondent, a qualified self-insured, to be paid direct as follows:

APPINO & ACHTEN REPORTING SERVICE	\$ 143.60
CURTIS, SCHLOETZER, HEDBERG, FOSTER & ASSOCIATES	\$ 453.01
HOSTETLER & ASSOCIATES, INC.	\$ 886.55
BRAKSICK REPORTING SERVICE	\$ 272.15

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: Judy A. Pope, 700 Jackson, Roof Garden Suite, Topeka, Kansas 66603  
H. Wayne Powers, P.O. Box 12290, Overland Park, Kansas 66282  
James R. Ward, Administrative Law Judge  
George Gomez, Director